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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/507,276	03/10/2005	Harald Michi	10191/3951	3860
26646	7590	08/14/2006	EXAMINER	
KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004			MANCHO, RONNIE M	
			ART UNIT	PAPER NUMBER
			3663	

DATE MAILED: 08/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/507,276

Applicant(s)

MICH I ET AL.

Examiner

Ronnie Mancho

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 April 2006.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11 and 14-20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 11 and 14-20 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 11, 14-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

In claim 11, the applicant recites “the *controller continuously checks the sensor device during the stop-and-go operation for at least one predefined condition*, wherein *the at least one predefined condition includes a turning operation of the motor vehicle* “, “the turn radius being determined by an evaluation of one of a yaw rate signal and a steering angle signal”. These are limitations new matter. The applicant has failed to indicate by page and line number where the limitations are disclose in the specification.

As an example, it is noted that the specification recites “the turn radius R of the turn negotiated by the vehicle at this very moment is calculated in step S3 based on the vehicle speed and the measured transverse acceleration of the vehicle, for example, and compared with a threshold value R<sub>Mu</sub>. If R is greater than R<sub>Mu</sub>, it means that the vehicle travels essentially straight ahead, i.e., no turning.

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In this case, it is checked in step S4 whether the instantaneous speed V of the vehicle is lower”. There is not disclosure of the claimed “the *controller continuously checks the sensor device during the stop-and-go operation for at least one predefined condition*, wherein *the at least one predefined condition includes a turning operation of the motor vehicle* “.

3. Claims 11, 14-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Further in claim 11, it is not clear what the limitation “and in the presence of the at least one predefined condition, initiates a procedure for the shutdown of the stop-and-go function” is referring to. That is, what is the predefined condition. Therefore. One skilled in the art cannot make and use the invention.

Claims 14-20 are rejected for depending on a rejected base claim. Applicants are advised to use proper punctuation such as semi-colons, colons, etc.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

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The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

5. Claims 11, 14-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Joyce et al (6560525).

Regarding claim 1, Joyce et al (abstract, figs. 1-12; col. 3, lines 15 to col. 8) disclose a cruise control system for a motor vehicle, comprising:

a sensor device 18 (fig. 1; col. 3, lines 15+) for measuring an operating parameter of the motor vehicle and for measuring a distance to an object located in front of the motor vehicle; and

a controller (fig. 1; col. 3, lines 15+) for controlling one of a speed and an acceleration of the motor vehicle as a function of the measured operating parameter and the measured distance to object, wherein:

the controller includes a stop-and-go (col. 3, lines 15+) function for automatically controlling driving off, rolling, and stopping as a function of a movement of the object;

the controller continuously checks the sensor device during the stop-and-go operation for at least one predefined condition, wherein the at least one predefined condition includes a turning operation of the motor vehicle, and wherein the turning operation is detected when a turn radius is smaller than a predefined threshold value, the turn radius being determined by an evaluation of

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one of a yaw rate signal and a steering angle signal, and in the presence of such a condition, initiates a procedure for the shutdown of the stop-and-go function.

Regarding claim 14, Joyce et al (abstract, figs. 1-12; col. 3, lines 15 to col. 8) disclose the cruise control system as recited in claim 11, wherein the turn operation is detected when the turn radius is constantly smaller than the predefined threshold value during a predefined time interval.

Regarding claim 15, Joyce et al (abstract, figs. 1-12; col. 3, lines 15 to col. 8) disclose the cruise control system as recited in claim 11, wherein the at least one predefined condition further includes an instantaneous speed of the motor vehicle being essentially equal to an intended speed in effect for the stop-and-go function during a predefined time interval, and no target object is detected during the predefined time interval.

Regarding claim 16, Joyce et al (abstract, figs. 1-12; col. 3, lines 15 to col. 8) disclose the cruise control system as recited in claim 11, wherein the at least one predefined condition further includes an instantaneous speed of the motor vehicle being lower than a limiting speed permitted for the stop-and-go function during a predefined time interval, and no target object being detected during the predefined time interval.

Regarding claim 17, Joyce et al (abstract, figs. 1-12; col. 3, lines 15 to col. 8) disclose the cruise control system as recited in claim 11, wherein the procedure for shutdown of the stop-and-go function includes an output of a request to a driver to one of take over control of the motor vehicle and, provided a condition is met, to switch over to a regular cruise control mode and distance control mode.

Regarding claim 18, Joyce et al (abstract, figs. 1-12; col. 3, lines 15 to col. 8) disclose the cruise control system as recited in claim 17, wherein the request includes an acoustic signal.

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Regarding claim 19, Joyce et al (abstract, figs. 1-12; col. 3, lines 15 to col. 8) disclose the cruise control system as recited in claim 11, wherein the procedure for shutdown of the stop-and-go function includes automatically regulating the speed of the motor vehicle to one of down to zero and to a low speed value.

Regarding claim 20, Joyce et al (abstract, figs. 1-12; col. 3, lines 15 to col. 8) disclose the cruise control system as recited in claim 17, wherein the speed is automatically regulated down after a certain waiting time subsequent to the output of the request has elapsed.

#### **MPEP 2114**

6. The statement of intended use or field of use, "for measuring", "for controlling.....as a function of", "continuously checks.....during the", "is detected when.....is smaller than.....during a predefined time interval", "being determined by", "in the presence of .....initiates a procedure for", "being essentially equal to", "being lower than a", etc clauses are essentially method limitation or statement of intended or desired use. Thus, the claim as well as other statements of intended use do not serve to patentably distinguish the claimed structure over that of the reference. See *In re Pearson*, 181 USPQ 641; *In re Yanush*, 177 USPQ 705; *In re Finsterwalder*, 168 USPQ 530; *In re Casey*, 512 USPQ 235; *In re Otto*, 136 USPQ 458; *Ex parte Masham*, 2 USPQ 2nd 1647. See MPEP § 2114 which states:

A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from the prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. *Ex parte Masham*, 2 USPQ 2nd 1647.

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Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than functions. In re Danly, 120 USPQ 528, 531.

Apparatus claims cover what a device is not what a device does. Hewlett-Packard Co. v. Bausch & Lomb Inc., 15 USPQ2d 1525, 1528.

As set forth in MPEP § 2115, a recitation in a claim to the material or article worked upon does not serve to limit an apparatus claim.

### ***Response to Arguments***

7. Applicant's arguments filed 4/11/06 have been fully considered but they are not persuasive.

The applicant's arguments are all drawn to limitations that are new matter as pointed out above. The applicant's arguments are further drawn to method of intended use limitations in an apparatus claim.

It is believed that the prior art anticipates the limitations in the claims. Even if the prior art did not cite the limitations (which the examiner is not conceding) in exactly the same terms and words recited by the applicant, it is believed that the prior art is capable of performing the recited limitations.

The rejections are believed to be proper and stand.



***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Communication***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ronnie Mancho whose telephone number is 571/272/6984. The examiner can normally be reached on Mon-Thurs: 9-5.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Keith can be reached on 571/272/6878. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ronnie Mancho  
Examiner  
Art Unit 3663

August 8, 2006

  
JACK KEITH  
SUPERVISORY PATENT EXAMINER